Northeast
Utilities System

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VIA ELECTRONIC POSTING

Philip Guidice, Commissioner
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Northeast Utilities Comments to the Department of Energy Resources Pertaining to Section 105 of Chapter 169 of the Acts of 2008

Dear Commissioner Guidice:

Northeast Utilities ("NU") appreciates the opportunity to comment to the Department of Energy Resources ("DOER") on the import feasibility provisions of the Green Communities Act (Chapter 169 of the Acts of 2008) (hereinafter referred to as the "Act").[1]

I. INTRODUCTION

The relevant portion of the Act pertaining to import feasibility is Section 105. The pertinent language in Section 105 is as follows:

> **(c)** The delivery of renewable energy into the ISO-NE control area, as described in subsection (b), shall not qualify under the renewable portfolio standard, notwithstanding such delivery into the ISO-NE control area, unless the generator of such renewable energy: (1) initiates the import transaction pursuant to a spot market sale…or under a bilateral sales contract…(2) complies with all ISO-NE rules and regulations required to schedule and deliver the renewable energy generating source's energy into the ISO-NE control area; and **(3) commits the renewable generating source as a committed capacity resource for the applicable annual period.**
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> …
>
> (d) The renewable portfolio standard credit applicable to the eligible renewable energy as determined under subsection (d) **shall be reduced by any exports of energy from the ISO-NE control area made by the person seeking renewable portfolio credit for such renewable energy or any affiliate of such person, or any other person under contract with such person to export energy from the ISO-NE control area and deliver such energy directly or indirectly to such person.**

1 NU is the largest provider of electric distribution services in New England. Its Massachusetts operating company is Western Massachusetts Electric Company. Other operating companies include The Connecticut Light & Power Company and Public Service Company of New Hampshire.

….

(g) **[DOER] shall assess the feasibility of implementing subsections (c) and (e)** and report its findings along with proposed regulations for implementing these subsections in accordance with section 12 of Chapter 25A, on or before November 1, 2008 [emphasis supplied].

In response to the Act's directives, DOER has provided an opportunity for stakeholders to comment by October 1, 2008 on the following questions:

- How should feasible be defined and why?
- Are implementation of subsections (c) and (e) of Section 105 of the Act feasible now? If not now, when and why?
- If feasible, what mechanisms either are in place, or can and must be established to monitor and verify compliance of each subsection? What would be the cost (in terms of finance and/or time) for such monitoring and verification of each?
- With regard to subsection (e), over what time spans and how frequently could and should import and export transactions be "netted?"

II. SUMMARY

With respect to DOER's inquiry going to the bolded language of the Act shown above, NU strongly urges DOER to determine that both: (a) requiring the delivery of imports into the ISO-NE control from a renewable generating source to be a committed capacity resource, and (b) requiring the netting of import and export transactions for the purposes of calculating the renewable portfolio standard credit, are infeasible and highly undesirable for the Commonwealth and its customers. The DOER should so report to the Legislature by November 1, 2008. Accordingly, no regulations providing for the implementation of these requirements should be further considered.

III. DISCUSSION

A. Overview

In setting forth its position on the questions posed by Section 105 of the Act and the DOER, NU wishes to state at the outset that it is aware that NSTAR Electric Company ("NSTAR") and National Grid USA ("NGRID") are submitting joint comments to the DOER today that provide considerable detail on many aspects of the issues. NU is in agreement with the positions stated in those joint comments and believes that the detail set forth there is important in the DOER's deliberations for its required November 1, 2008 report.[2]

Because the NSTAR and NGRID joint comments provide a great deal of the detail, NU will not repeat them here. Instead, NU wishes to present primarily what it views as the wider

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2 The NSTAR and NGRID comments include an analysis of the legal implications of possible action as it pertains to the Commerce Clause of the United States Constitution. NU believes that this topic warrants serious consideration but NU has not independently reviewed the legal implications of the Commerce Clause.

picture that DOER should consider in weighing the feasibility of extremely restrictive provisions pertaining to the import of renewable resources. The net effect of adopting these provisions would be to narrow the options available to the Commonwealth's customers and subject them to higher costs than the rest of New England or other regions.

NU strongly believes that any possible restrictions on renewable energy must be viewed in light of the overall intent of the Act. The Act has introduced a number of laudable goals and NU, like many other parties, are prepared to take affirmative steps to help the Commonwealth (and other states in the region) meet its objectives with regard to energy and with regard to the environment. Further, NU applauds the leadership shown by Secretary of Energy and Environmental Affairs Ian Bowles, Department of Public Utilities Chairman Paul Hibbard, yourself, and many others in state government in this effort. We share with you a belief that together we can transform Massachusetts into a state with a lower usage per customer and a lower ratio of carbon dioxide emitted per kilowatt hour produced, both of which will pay economic, environmental and strategic benefits to the state for years to come. However, if restrictions are required by the Commonwealth which are not required by other states, or which have the impact of limiting the benefits available for Massachusetts customers, the laudable goals of the Act may not be realized.

With respect to renewables, the Commonwealth's goals are ambitious and will necessitate action on all fronts – including aggressive conservation/demand side initiatives, development of renewables and other low carbon sources of power – if we are to meet the challenges we have set for ourselves. Our focus should not be on whether or not to import but rather on the economic viability of resources, the timeframe for developing them, and their ability to impact the "carbon footprint" of industry and the economy. Massachusetts has a variety of "indigenous" renewable resources. Of these, wind (particularly off-shore wind) may be the only resource where economics are reasonably well-known and can be developed in relatively large scale developments. The Cape Wind project in Nantucket Sound is one example of this. Other forms of renewables, such a solar, biomass, geothermal, will either require multiple smaller scale projects or significant bets that economics improve significantly with scale. Other large scale attractive resources within the NE-ISO region include the wind resources of northern New England. Of additional interest are the large scale developments Quebec and eastern Canada (hydroelectric, wind, and potentially even nuclear). The goal of the state should be to optimize these resources for the economic and environmental benefits of all residents.

It is also appropriate to ask about the effect on customers' pocketbooks when determining if a particular action is suitable. Here, the effect of imposing capacity requirements for the importation of Renewable Energy Credits ("RECs") into Massachusetts and netting requirement will indisputably, and unnecessarily, take money from customers. That is because the effect of making the importation of RECs either difficult or impossible will lead to a relative scarcity of RECs and thus result in a higher price for the RECs that are available. In addition, if Massachusetts institutes rules on capacity requirements and netting, it will be the only New England state to do so. The effect of this would be that imported RECs will flow to other states with a Renewable Portfolio Standard ("RPS") requirement. Such a result means that Massachusetts customers, individuals and businesses alike, will end up paying more for RPS compliance than the customers in neighboring states. Massachusetts' electric rates are high enough and there is no defensible reason for putting our state's residents and businesses at a further economic disadvantage compared to other New England states.

This is the context in which NU urges DOER to evaluate the 'feasibility' of capacity commitments and netting. In large measure, everything is feasible given unlimited sums of money and unlimited amounts of time. But unlimited money and time are not luxuries available to us. We should consider, as the NSTAR and NGRID comments indicate, the word feasible in the sense that means 'suitable' and/or 'consistent with the state's clearly enunciated energy policy'. In this context there is no question that DOER can, and indeed must, find capacity commitments and netting infeasible.

B. Capacity Requirements and Netting

Beyond the powerful larger reasons for a finding of infeasibility, there are also strong technical reasons for such a finding for capacity requirements and netting. NSTAR and NGRID identify many of these. First, with respect to capacity requirement, such a requirement means that a renewable generating facility would need to be accepted as a capacity resource by ISO-NE before RECs from that facility could be imported. However, in speaking here of RECs, we are referring to things that are simply a certificate of 'greenness' and not a reliability product. If anything, RECs are an energy by-product and it is not appropriate to mandate a link for it to capacity requirements.

Moreover, a capacity requirement for RECs is inconsistent with ISO-NE rules pertaining to the Forward Capacity Market ("FCM"). The FCM rules require auctions to determine capacity obligations three years in advance of the obligation date. It is not known whether capacity commitments associated with RECs energy imports qualified and offered into the auction will clear. Such a problem, while technical, is not a mere detail. Rather, it points up the fallacy of trying to fit a 'round' product related to energy, RECs, into the 'square' hole of capacity rules.

Second, with respect to the reduction of RPS credits through netting as a means of deterring 'laundering', pursuing a strategy of selling clean energy into Massachusetts and selling less clean in-state energy to areas beyond the state's borders raises a host of problems. One is that instituting such a rule will likely have a chilling effect on efforts by suppliers to bring renewable energy into the state because the rule will of necessity be complicated, if not convoluted, and it will be easier to deliver energy to other states than taking the chance of running afoul of the Massachusetts rule.

Another, related problem, is that because of the inherent complexity of this scheme it will undoubtedly lead to gaming on the part of some parties. How, for example, would it be possible to trace all transactions in the energy marketplace to determine who is and who is not in compliance with such a netting requirement? What type of extensive infrastructure is in place or would have to be put in place for the purposes of these determinations? ISO-NE, the party that presumably would be expected to monitor RECs trading and verify compliance, expressed the difficulties of such a task at the DOER stakeholders meeting held on September 23, 2008. In addition to these problems, of course, is the additional cost to modify existing tracking mechanisms. If Massachusetts is the only state with these requirements, Massachusetts will likely bear the costs.

Further, the institution of a netting scheme appears to be a solution in search of a problem. There are no credible examples of laundering to NU's knowledge, and at the recent stakeholders meeting held by DOER no one, including ISO-NE, could cite an example of such a practice.

With these comments pertaining to netting, NU is not advocating the DOER ignore the potential practice of laundering. At some time in the future, it may become an issue that ought to be addressed. If so, DOER has explicit authority in Section 105 of the Act to promulgate all pertinent regulations. However, laundering is not now an identified problem and it is unclear whether appropriate, effective regulations to eliminate this potential problem can be drafted.

IV. CONCLUSION

Requiring renewable generation outside New England to carry an ISO-NE capacity obligation is not feasible because: (1) it is contrary to the Patrick Administration's energy policy, and it is opposite to the direction we should proceed in our efforts to foster renewable generation and ultimately displace generation from older, fossil-fired generation facilities; (2) we should be encouraging renewable generation wherever it can be economically developed and not hold Massachusetts consumers hostage to the potentially higher prices that may result from a policy that forces dependence on in-region 'clean' energy; and (3) of the serious technical problems associated with such a complicated scheme. Likewise, netting of RECs is an idea whose time has not yet come. It is not feasible to devote enormous resources for regulations that may not solve a problem – a problem that, in fact, does not yet exist. The Act removes many obstacles from the path of the creation of energy and environmental benefits for Massachusetts customers. A clear, unencumbered path, without a capacity requirement for non-New England renewable generation facilities and without a netting provision, is critical to stakeholder collaboration and our shared success in this endeavor.

In sum, Massachusetts should pursue the goals set forth in the Green Communities Act and other recent policy initiatives of the Patrick Administration with great vigor and with as few restrictions on the set of actions that the industry could put forth as possible. Economics will ultimately win and when economics win, the Commonwealth's customers will win.

If you have any questions regarding the above, please feel free to contact me or Steve Klionsky at 617-345-1066.

Very truly yours,

/s/

Donald M. Bishop
Manager, Regulatory Policy - Massachusetts